COURT OF COMMON PLEAS
PROBATE DIVISION
BUTLER COUNTY, OHIO

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BUTLER COUNTY
PROBATE COURT
JUDGE STEPHEN W. POWELL

First Nat'l. Bank of SWO, : CASE NO. 94-0175
Pl.

-vs- CASE SCHEDULING
Miami University et al., ORDER
Def. Judge Powell

1. This case is fixed for bench/(jury) trial 9/5/95 at 9:00 A.M.; for pretrial/settlement conference on _____ at ___.M.; for trial setting and consideration for referral to Alternate Dispute Resolution on _____at ____M.

2. All discovery will be completed by 4/3/95, except as provided otherwise by Court order. All Plaintiff's experts must be identified by 2/1/95, with discovery of expert testimony and opinion to be completed by _____. All Defendant's experts must be identified by 2/1/95 with discovery of expert testimony and opinions to be completed by _____.

3. All motions for summary judgment and motions to dismiss will be filed by _____.

4. Alternative Dispute Resolution;

be completed by _____with discovery completed by _____.

5. A joint pretrial statement shall be provided to the Court by the pretrial.

6. Jury Instructions/Trial brief must be submitted by the day before trial.

7. Other: Motions to Strike filed by Jan. 16, 1995. Response due 2/1/95. Plaintiff's response 2/8/95. Court's Ruling due 2/15/95.

Failure to comply with this order, the Rules of Civil Procedure, or the Local Rules of Practice may result in the imposition of sanctions by the Court.

SO ORDERED /s/Stephen W. Powell

IN THE COURT OF COMMON PLEAS
PROBATE DIVISION
BUTLER COUNTY, OHIO

THE FIRST NATIONAL BANK OF SOUTHWESTERN OHIO, EXECUTOR OF THE ESTATE OF WALTER E. HAVIGHURST	*	CASE NO. 94-0175
	*	Judge Randy Rogers
PLAINTIFF		
VS.	*	
MIAMI UNIVERSITY, ET AL.	*	OPINION AND ENTRY OVERRULING DEMANDS FOR JURY
DEFENDANTS	*	

This matter came before the Court on July 12, 1995, for argument concerning Plaintiff's Motion to Strike or Otherwise Dismiss Jury Demand of Alan W. Havighurst and Douglas A. Havighurst filed by Plaintiff on January 17, 1995, and then again on August 22, 1995.

Revised Code Section 2101.31 provides:

> "All questions of fact shall be determined by the probate judge, unless he orders them tried by a jury, or referred, as provided in sections 2101.06 and 2101.07, and section 2315.26 to 2315.37, inclusive."

No party to a declaratory judgment action instituted in the Probate Court has any constitutional or absolute statutory right to trial by jury. Renee v. Sanders (1953), 160 Ohio St. 369, 116 N.E.2d 420.

Counsel for the Defendants/Counter-Claimants Alan W. Havighurst and Douglas A. Havighurst urged the Court in their Memorandum filed on January 31, 1995 and then again during the hearing which took place on July 12, 1995, to delay its ruling on this issue until "additional filings submitted to the Court, discovery, and the orderly movement toward an established date for trial will give the Court better perspective on the myriad issues in this case." Discovery has now been completed and this case is set for trial September 5, 1995.

The pleadings in the case sub judice raise issues of interpretation and/or construction of the terms of a will which has provisions seeking to establish a charitable trust. The Supreme Court of Ohio has previously ruled in Sessions v. Skelton (1955), 163 Ohio St. 409, and in Gearhart et al v. Richardson (1924) 109 O S 418, that such issues are primarily equitable in nature. The parties in this case have also interjected the doctrines of cy pres and deviation.

This Court understands that it has the right and power to grant the demands for jury. However, given the nature of the issues presented in this case, in the exercise of this Court's discretion, this Court does not deem it wise and proper to do so.

IT IS THEREFORE ORDERED that the Jury Demands of the Defendant/Counterclaimants Alan W. Havighurst and Douglas A. Havighurst are denied. Plaintiff's Motion to Strike or Otherwise Dismiss Jury Demand is granted.

/s/ Randy T. Rogers, Judge
Filed August 24, 1995

IN THE COURT OF COMMON PLEAS
PROBATE DIVISION
BUTLER COUNTY, OHIO

THE FIRST NATIONAL BANK OF SOUTHWESTERN OHIO, EXECUTOR OF THE ESTATE OF WALTER E. HAVIGHURST	*	CASE NO. 94-0175
	*	Judge Randy Rogers
PLAINTIFF		
VS.	*	
MIAMI UNIVERSITY, ET AL.	*	OPINION AND ENTRY OVERRULING MOTION FOR SUMMARY
DEFENDANTS	*	JUDGMENT FILED BY PLAINTIFF, FIRST NATIONAL BANK OF SOUTHWESTERN OHIO

This matter came before the Court on July 12, 1995, for argument concerning the Motions for Summary Judgment filed by the Plaintiff. The Court having reviewed the pleadings, the memoranda and affidavits and other documents filed in support and in opposition to said Motion, and having reviewed the authorities cited therein and being otherwise advised finds that said Motion should be overruled at this time.

Summary judgment shall be granted if: "no genuine issue of material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) the evidence demonstrates that reasonable minds can come to but one conclusion, and that conclusion is adverse to the party opposing the motion." Civ. R.

56; Temple v. Wean United, Inc. (1977), 50 Ohio St. 2d 317, 327, 364 N.E.2d 267, 274; Davis v. Loopco Industries, Inc. (1993), 66 Ohio St.3d 64, 609 N.E.2d 1093, 1097.

In First National Bank of Cincinnati v. Devlin, 63 Ohio App.3d 708, 580 N.E.2d ___ [sic:page number omitted](1989), the 12th District Court of Appeals of Ohio reversed a trial court ruling granting summary judgment to three hospices selected by the executor of an estate to receive the residue of the estate. In Devlin, supra, the decedent's will provided that the residue of decedent's estate be distributed by decedent's executor for "the benefit of hospices in small towns excluding Lebanon, Ohio devoted primarily to the care of patients terminally ill with chronic obstructive pulmonary disease particularly emphysema, selected by my executor." An action seeking construction of the decedent's will was filed by decedent's executor, First National Bank of Cincinnati, alleging that it was in doubt as to the true construction of the will and could not proceed without the direction of the court. Thereafter a number of hospices intervened in the action. While the action as pending the executor, after reviewing a substantial volume of information, chose three hospices that most closely met the provisions of the will; the court administering decedent's estate then approved the three recommendations. After the three hospices were selected by the executor in Devlin, supra, the three hospices then moved for summary judgment, which was granted by the trial court which

relied in an alternative way upon "the doctrine of cy pres and/or deviation." The appellate court reversed, finding that because of a conflict in the evidence submitted a genuine issue of material fact did exist. The appellate court went on to state that it "would be premature to determine the application of the cy pres or deviation doctrines when the issue as to the qualification or lack of qualification of the hospices under the terms of the will is still an open question."

The case sub judice is an action for declaratory judgment. Plaintiff has requested the guidance and approval of the Court and a declaratory judgment declaring, inter alia, (1)"that the terms of the Charitable Trust, as set out in the Will, creates no reversionary interest in the heirs of the Testator." (2) "that the Charitable Trust is to be fully funded and carried out, in accordance with its terms" and (3) "that the Trustee, consistent with the charitable intent of the Testator, is authorized by the terms of the Will to provide funding, as otherwise authorized by the Will, for programs related to the U.S.S.R. as it previously existed; for programs related to the people and institutions previously and currently located within areas formerly occupied by the USSR; and for other programs coming within the scope of the Charitable Trust as reasonably interpreted by the President of Miami University in the exercise of his or her sole discretion pursuant to the terms of the Charitable Trust."

Defendants/Counterclaimants Alan W. Havighurst and Douglas A. Havighurst have filed a complaint for declaratory judgment asking that the Court declare, inter alia, (1) "that the putative trust cannot be carried out in accordance with its terms", (2) that the proposed gift of trust must fail and lapse and (3) that "the residuary estate of testator be declared intestate property and pass according to the provision of the Statute of Descent and Distribution. . . ."

As in the Devlin case, the doctrines of cy pres and deviation and the propriety of their application to this case have been discussed by the parties. At this stage of the proceedings, Plaintiff's motion lacks merit and is accordingly overruled.

It IS THEREFORE ORDERED that the Motion for Summary Judgment filed by Plaintiff, First National Bank of Southwestern Ohio is hereby overruled.

/s/ Randy T. Rogers, Judge
Filed August 24, 1995

IN THE COURT OF COMMON PLEAS
PROBATE DIVISION
BUTLER COUNTY, OHIO

THE FIRST NATIONAL BANK OF SOUTHWESTERN OHIO, EXECUTOR OF THE ESTATE OF WALTER E. HAVIGHURST	*	Case No.94-0175
	*	Judge Randy Rogers
Plaintiff	*	OPINION AND JUDGMENT ENTRY OF DECLARATORY
vs.		
MIAMI UNIVERSITY ET AL.	*	JUDGMENT
		FINAL APPEALABLE
Defendants		ORDER

* * * * * * *

The above entitled matter came before the Court for trial on September 4, 1995 on Plaintiff's Complaint for Declaratory Judgment, the Amended Counterclaim of the Defendant, Alan W. Havighurst, the Amended Counterclaim of Defendant, Douglas A. Havighurst, and the other pleadings filed herein and the Court having heard the testimony of the witnesses, examined the exhibits introduced at trial, and considered the arguments and memorandums of counsel does now render its Opinion and issue its judgment concerning the issues herein raised.

Walter E. Havighurst died on February 3, 1994. The Last Will and

Testament of Walter E. Havighurst dated September 8, 1988 and a Codicil to that Will dated October 11, 1989 were admitted to probate on February 11, 1994 in the Probate Court of Butler County, Ohio. Dr. Havighurst left assets valued at approximately $6,130,000 to be administered through his probate estate. Item III of the Havighurst Will provided, inter alia:

"ITEM III. A. I give and devise all of the real property I may own, or have an interest in at the time of my death, to Miami University, Oxford, Ohio. This bequest is unrestricted and the Board of Trustees may use and expend the same for the benefit of the University in any manner it deems appropriate.

B. To the individuals and institutions listed below, I give and bequeath the following:

1. To MIAMI UNIVERSITY, Oxford, Ohio any and all books owned by me at my death;
2. To MIAMI UNVIERSITY, Oxford, Ohio all of my papers, letters, manuscripts, and other items of literary interest. It is my desire that such items be placed in THE KING LIBRARY of MIAMI UNIVERSITY.
3. To SAMUEL NEFF, now residing in Richmond, Indiana, if he survives me, any automobile, typewriters, and luggage, owned by me at my death.
4. To MIAMI UNVIERSITY, Oxford, Ohio, my Hodgin painting of

Fisher Hall, presently hanging in my study, if owned by me at my death. It is my desire that said painting be placed in the Joseph M. Bachelor Room of Bachelor Hall, Miami University, Oxford, Ohio.

5. To my niece, RUTH NEFF, now residing in Richmond, Indiana, if she survives me, all furniture, appliances, rugs, draperies, silver, china, crystal, art objects, decorative pieces, and all other furnishings and items for household use, located in my residence at the time of my death.
6. To GOODWILL INDUSTRIES, all men's clothing which I own at the time of my death.

C. I give and bequeath to each of the following individuals as follows:

1. $100,000 to my sister, Mrs. MIRIAM HAVIGHUST JOHNSON, if she survives me;
2. $25,000 to BRUCE J. HAVIGHURST, now residing at 20861 Byron Road, Shaker Heights, Ohio 44122, if he survives me;
3. $25,000 to DOUGLAS A. HAVIGHURST, now residing at 1151 Haselton Road, Shaker Heights, Ohio 44121, if he survives me.
4. $25,000 to ALLAN W. HAVIGHURST, now residing at 3071 Huntington

Road, Shaker Heights, Ohio 44120, if he survives me[1] —

5. $25,000 to WALTER E. HAVIGHURST, now residing at 338 West 47 Street, New York, New York, 10024, if he survives me;
6. $25,000 to JAMPES P. HAVIGHURST, now residing at 52 Rapaki Road, Christchurch, New Zealand, if he survives me.
7. $25,000 to RUTH NEFF, now residing at 329 SW First Street, Richmond, Indiana 47374, if she survives me;

D. I give and bequeath to my niece, HELEN BERK, now residing at 2301 Cheryl Drive, Jacksonville, Florida 32017, if she survives me, the sum of $5,000.000.

E. If DOUGLAS A. WILSON and SUSAN WILSON, or either of them or their estates, or their beneficiaries thereof, should be indebted to me at my death, as evidenced by a note and a second mortgage executed by them and delivered to me, in the face amount of $50,000, or any renewals thereof, I direct and require that all of such indebtedness and all interest thereon be forgiven and cancelled in its entirely, it being my intention by the bequest to relieve said DOUGLAS O. WILSON and SUSAN WILSON, or either of them, or their estates, or their beneficiaries thereof of any obligation to repay said indebtedness, or any part thereof, or any interest thereon.

F. I give and bequeath the sum of

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[1] The name and address of Alan W. Havighurst were corrected in the October 11, 1989 Codicil to the Havighurst Will

$250,000 to MIAMI UNIVERSITY, Oxford, Ohio to be used by Miami University as an endowment for the Special Collections Library, for enhancing its holdings.

G. All the rest, residue and remainder of my estate, of whatever nature and wherever situated, which I own at the time of my death, I give, devise and bequeath to THE FIRST NATIONAL BANK OF SOUTHWESTERN OHIO, Monroe, Ohio, IN TRUST NEVERTHELESS, for the following uses and purposes and under the following terms and conditions:

(a) I do hereby confer on my Trustee all of the powers which are now or may hereafter be conferred by law upon trustees, and in addition thereto, my said Trustee shall have full power and authority to perform the following.

(b) The income of my trust estate, and the principal if need be, shall be used by my Trustee to promote and fund educational projects through the Miami University International Center, Oxford, Ohio, for building cross-cultural understanding between the peoples of the United States of America and the Union of Soviet Socialist Republics. The President of Miami University, Oxford, Ohio, or his or her designee, shall have the sole discretion to determine the nature of said projects, within the guidelines set forth below, and to determine the amounts necessary to fund said projects.

1. Funding and promoting

presentations to members of the general public on the Soviet Union;
2. Funding and promoting classes and presentations to Miami University students and children on various aspects of Soviet life;
3. Funding and promoting study groups and classes for Miami University students and adults on Soviet-American relations and contemporary Soviet society;
4. Funding and promoting presentations, seminars, and studies on relations between the governments of the United States and the Soviet Union;
5. Funding and promoting programs and classes dealing with conflict relationships at the international level;
6. Funding and promoting Miami University student, and group trips by members of the Oxford, Ohio community to the Soviet Union through a "sister city" program, according to guidelines set forth by Sister Cities International, Washington, D.C.;
7. Funding and promoting group trips to the Soviet Union to allow Miami University students, Oxford, Ohio citizens, and other Americans to meet and establish direct contact with municipal

officials, industrial workers, educators, students, medical, legal, and other professionals, agriculturalists, and creative artists;

8. To promote and fund exchanges of children's artwork between Soviet and American children and to promote and to fund consultative services to municipalities and groups wishing to establish direct contact with Soviet people and their counterparts;

9. To establish and fund an endowed professorship of Soviet-American Relations at Miami University, Oxford, Ohio.

(c). This trust fund shall be referred to as the WALTER E. HAVIGHURST FUND.

(d). It is contemplated that the trust income and principal, if needed, shall be used, at least initially, to fund and promote the projects listed in (b) above, primarily in Southwestern Ohio and Southeastern Indiana. However, my trustee shall have the authority to fund such projects anywhere in the United States, if they are in keeping with the overall purposes of this trust and if pursuant to instructions given to it by the President of Miami University, Oxford, Ohio.

(e) I request that RUTH NEFF and SAMUEL NEFF, now residing in Richmond, Indiana, by [sic] utilized

as consultants to the President of Miami University, Oxford, Ohio, for the purposes of providing suggestions and advice on ways that the above projects might be accomplished although the ultimate decisions shall remain with said President.

(f) As set forth above, all determinations regarding expenditures of funds shall be made by the President of Miami University, Oxford, Ohio, or his or her designee. My Trustee shall be relieved of any and all liability from or responsibility for the decisions made by said President."

The only substantive change to the Havighurst Will by the October 11, 1983 Codicil was the addition of the following provision under Item III, paragraph C:

"8. "$25,000 to DOROTHY H. KUCERA, now residing at 9310 Hamlin Avenue, Evanston, Illinois 60203, if she survives me."

The value of the specific bequests distributed to both private individuals and charitable and/or educational institutions under Item III of the Havighurst Will totaled approximately $725,000. The bulk of the Havighurst Estate, which after payment of the estate taxes, decedent's debts, and the costs of the administration of decedent's estate was in excess of $4,500,000, has been distributed to the First national Bank of Southwestern Ohio, as Trustee, under the

provisions set forth in Paragraph G of Item III of the Havighurst Will.

The case sub judice is primarily an action for declaratory judgment. Plaintiff has requested the guidance and approval of the court and a declaratory judgment declaring, inter alia, (1) "that the terms of the Charitable Trust, as set out in the Will, create no reversionary interest in the heirs of the Testator," (2) "that the charitable Trust is to be fully funded and carried out, in accordance with its terms," and (3) "that the Trustee, consistent with the charitable intent of the Testator, is authorized by the terms of the Will to provide funding, as otherwise authorized by the Will, for programs related to the U.S.S.R. as it previously existed; for programs related to the people and institutions previously and currently located within areas formerly occupied by the U.S.S.R.; and for other programs coming within the scope of the Charitable Trust as reasonably interpreted by the President of Miami University in the exercise of his or her sole discretion pursuant to the terms of the Charitable Trust."

Defendant/Counterclaimants Alan W. Havighurst and Douglas A. Havighurst have filed their own complaints for declaratory judgment asking that the Court declare, inter alia, (1) "that the putative trust cannot be carried out in accordance with its terms", (2) that the proposed gift of trust must fail and lapse and (3) that "the residuary estate of testator be declared intestate

property and pass according to the provisions of the Statute of Descent and Distribution…"

The portion of the Havighurst Will that is the primary source of controversy in this case is Sub-paragraph (b) of Paragraph G in Item III of the Will. Therein the testator used the following language:

> " (b) The income of my trust estate, and the principal if need be, shall be used by my Trustee to promote and fund educational projects through the Miami University International Center, Oxford, Ohio, for building cross-cultural understanding between the peoples of the United States of America and the Union of Soviet Socialist Republics. The President of Miami University, Oxford, Ohio, or his or her designee, shall have the sole discretion to determine the nature of said projects, within the guidelines set forth below, and to determine the amounts necessary to fund said projects." (emphasis added).

To decide the issues raised by the pleadings in the case sub judice the Court must construe the language of the Havighurst Will. A probate court may construe the provisions of a will in a declaratory judgment action. R.C. 2127.03. See also In re Trust of Selsor, 13 Ohio App. 3d 164, 468 N.E. 745 (1983). In the construction of a will, the sole purpose of the court should be to ascertain and carry out the intention

of the testator. Such intention must be ascertained from the words contained in the will. Townsend's Executors v. Townsend, et al. (1874), 25 Ohio St. 477; Carr v. Stradley (1977), 52 Ohio St. 2d 220, 371 N.E. 2d 540; American Diabetes Ass'n', Inc. v. Diabetes Soc. Of Clinton Cty., 31 Ohio App. 3d 136, 509 N.E. 2d 84 (1986).

When a term in a will is susceptible to various meanings, the Probate Court may consider the circumstances surrounding the drafting of the instrument in order to arrive at a construction consistent with the overall intent of the testator so as to uphold all parts of the will. Willis v. Union Savings & Trust Co. (1982), 69 Ohio St. 2d 382, 433 N.E.2d 415, American Diabetes, supra. As stated by the Ohio Supreme Court in Holmes v. Hrobon (1953) 158 Ohio St. 508, 110 N.E. 2d 574:

> "If possible, the testator's intention must be determined from the instrument itself. It is, however, well settled that where there is some doubt as to the meaning of the will the Court may admit extrinsic evidence. With such evidence the Court is better able to see things as the testator saw them and to give that construction which he intended." Holmes, supra, 110 N.E. 2d 574, 581.

It has also been stated that whether the will appears ambiguous or not, the Court is entitled to hear such extrinsic evidence of the surrounding circumstances as will put it in the place of the

testator. Until this is done, the Court cannot know whether the will is ambiguous or not. While evidence of surrounding circumstances is admissible to enable the Court to understand the meaning of the words which testator has used in the will, it is not admissible to add to the will provision which cannot fairly be inferred from the language which is used therein, or to take from the will provisions which are clearly expressed therein. See Page, The Law of Wills, Sec. 32.2, page 237. In any case where it is necessary to invoke extrinsic evidence to assist in the construction of a will, it is recognized by the great weight of authority that evidence of the facts and circumstances existing at the time of the execution of the will, and known to the testator, is admissible not to contradict the meaning of the will, but to "enable the court to place itself in the testator's situation, to see things as the saw them, and to apply his language as he understood and intended it." See Page, The Law of Wills, Section 32.8, page 260.

In Subparagraph (b) of Item III, Paragarph G, the testator made reference to the "peoples of the United States of America and the Union of Soviet Socialist Republics" and in the nine subparagraphs that followed, the testator repeatedly used the terms "Soviet" and "Soviet Union. At the time that Walter E. Havighurst executed his Last Will and Testament the "Union of Soviet Socialist Republics" was also referred to as the "Soviet Union" and was one of the largest

nations in the world. In 1987, approximately 284,000,000 people lived in the fifteen Soviet Socialist Republics which then comprised the "Soviet Union". The Republics which made up the Union of Soviet Socialist Republics included the Russian Soviet Federated Socialist Republic, the Ukrainian S.S.R.,[2] the Byelorussian S.S.R., the Uzbek S.S.R., the Kazbah S.S.R., the Georgian S.S.R., the Azerbajan S.S.R., the Lithuanian S.S.R., the Modavian S.S.R., the Latvian S.S.R., the Kirghiz S.S.R., the Tajik S.S.R., the Armenian S.S.R., the Turkem S.S.R., and the Estonian S.S.R. At the time that Walter E. Havighurst executed his Last Will and Testament, twenty-two different "peoples" or ethnic groups with at least one million members or more lived within the fifteen Republics that then comprised the "Union of Soviet Socialist Republics."

In 1991, the "Union of Soviet Socialist Republics" ceased to exist as a political entity. Today, there are still twenty-two different "peoples" or ethnic groups with at least one million members or more living in the same geographical area that was formerly known as the "Union of Soviet Socialist Republics". The former Russian Soviet Federated Socialist Republics is now known as the Russian Federation or Russia. The Ukranian S.S.R. is now known as Ukraine. The former Byelorussian S.S.R. is now known as Belarus. The former Uzbek S.S.R. is now known as Uzbekstan. The

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[2] "S.S.R." is an abbreviation for "Soviet Socialist Republic."

former Kazbah S.S.R. is now known as Kazakhstan. The former Georgian S.S.R. is now known as Georgia. The former Azerbajan S.S.R. is now known as Azerbaijan. The former Lithuanian S.S.R. is now known as Lithuania. The former Moldavian S.S.R. is now known as Moldava. The former Latvian S.S.R. is now known as Latvia. The former Kirghiz S.S.R. is now known as Kyrgyzstan. The former Tajik S.S.R. is now known as Tajikistan. The former Armenian S.S.R. is now known as Armenia. The former Turkem S.S.R. is now known as Turkmenistan. The former Estonian S.S.R. is now known as Estonia.

Eleven of the former SovietSocialist Republics have joined with the Russian Federation to form a political entity known as the Commonwealth of Independent States. Estonia, Latvia and Lithuania have not joined this Commonwealth. Different terms are now used to refer to the geographic area that was once known as the "Soviet Union." Some people refer to this area as "the former Soviet Union." Others refer to this area as the "post Soviet states." Still others refer to this area of the world as the "Newly Independent States." No matter what nomenclature is used, there are still twenty-two different "peoples" or ethnic groups with at least one million members or more living in the same geographical area that was formerly known as the "Union of Soviet Socialist Republics."

Defendant/Counterclaimants Alan W. Havighurst and Douglas A. Havighurst have asserted that because the Soviet Union no

longer exists as a political entity, the trust described in Paragraph G of the Havighurst Will cannot be carried out in accordance with its terms, the proposed gift of trust must fail and lapse and the residuary estate of testator must be declared intestate property and pass to them and their relatives according to the provisions of Ohio's Statute of Descent and Distribution. For a number of reasons the Court disagrees with such assertions.

The Walter E. Havighurst Fund was designed by the testator "to promote and fund educational projects." The language creating the Walter E. Havighurst Fund is found in Paragraph G of the Havighurst Will. Paragraph G is a general residuary clause. The creation of a charitable trust within the language of a residuary clause is not unusual. A much more simplified residuary clause, i.e., "the residue of my estate I give to The Cleveland Trust Company to be devoted to the needy & poor women," was held by the Ohio Supreme Court to create a valid testamentary charitable gift in Palmer v. Oiler (1921) 102 Ohio St. 271, 131 N.E. 362. Gifts in trust for the purposes of education are within the rules governing charitable trusts and are liberally construed. Carrel v. State ex rel. Brown, 11 Ohio App. 281, 30 CC(NS) 161 (1919).

Gifts for charitable purposes have always been favored in equity, and trusts created for such purposes are carried into effect upon broad liberal principles of equity jurisprudence under

circumstances where a purely private trust might fail. Gearhart v. Richardson, (1924), 109 Ohio St. 418, 142 N.E. 890. As noted by the Ohio Supreme Court in Gearhart, supra, many charitable trusts have been construed, and rarely has a trust for charitable purposes been allowed to fail. See Lessee of Bryant v. McCandless, 7 Ohio, pt. 2, 135; Trustees of McIntire Poor School v. Zanesville Canal & Mfg. Co. v. Zanesville, 20 Ohio St., 483; Williams v. First Presbyterian Society in Cincinnati, 1 Ohio St., 478; Landis v. Wooden, 1 Ohio St., 160, 163, 59 Am.Dec., 615; Hullman v. Honcomp, 5 Ohio St., 525; McIntire's Admrs. V. Zanesville, 17 Ohio St., 352; Miller v. Teachout, 24 Ohio St., 525; Bd. Of Ed of Fairfield Twp. V. Ladd, 26 Ohio St. 211; American Traci Society v. Atwater, 30 Ohio St., 77, 27 Am.Rep., 422; Scott v. Trustees of Marion Township, 39 Ohio St., 153; Sowers v. Cyrerius, 39 Ohio St. 29, 48 Am.Rep. 418; Christy v. Commissioners, 41 Ohio St. 711; Mannix, Assignee, v. Purcell, 46 Ohio St. 102, 19 N.E., 572, 2 L.R.A., 753, 15 Am St. Rep., 562; Palmer v. Oiler, Exrx., 102 Ohio St., 271, 131 N.E.,362. In all the above cases charitable trusts have been sustained.

Since Gearhart, supra, was decided, Ohio courts have continued to sustain the validity of charitable trusts. See American Diabetes Association, Inc. v. Diabetes Society of Clinton County, 31 Ohio App. 3d 136, 139, 509 N.E.2d 84 (1986); First National Bank of Akron, Trustee, v. Unknown Heirs of Donnelly,

Jr., et al., 96 Ohio App. 509, 122 N.E. 2d 672 (1954); Craft v. Shroyer, 81 Ohio App. 253, 74 N.E. 2d 589 (1947); Heinlein v. The Elyria Savings & Trust Co., Exr. and Trustee, 75 Ohio App. 353, 62 N.E. 284 (1945); City of Springfield, Trustee v. Patterson, 26 Ohio Misc. 242, 270 N.E. 2d 683 (1970); and Fenn College, et al v. Nance, et al., 4 Ohio Misc. 183, 210 N.E.2d 418 (1965).

Walter E. Havighurst was a charitable person. He had an affinity for Miami University, a school at which he had served for many years as a distinguished member of the faculty. Dr. Havighurst was interested in education. The terms of his Will reflect his nature and interests. After making specific bequests to his nieces and nephews of what most people would regard as a substantial sum of money, he provided that "all the rest, residue and remainder of my estate, of whatever nature and wherever situation, which I own at the time of my death," he left in a trust to be known as the Walter E. Havighurst Fund. His purpose in creating the trust was a charitable one. The Court finds that the Walter E. Havighurst fund is a charitable trust as that term has been construed by the Courts of Ohio.

In reviewing the terms of a testamentary charitable trust to determine the overall intent of the testator, a probate court must examine the language of the charitable trust to see what the testator intended to be accomplished by the administration of the charitable trust. The language of the

Havighurst Will clearly reflects that the testator intended that the trust funds be used to promote and fund educational projects for building cross-cultural understanding between the peoples of the United States of America and the Union of Soviet Socialists Republics. The testator set forth nine (9) guidelines for carrying out this intent. The guidelines describe the types of educational projects that the testator wanted the Walter E. Havighurst Fund to promote and fund.

The probate court must also examine the language of the charitable trust to see who the testator intended to benefit through the administration of the charitable trust. In the case sub judice the language of the Havighurst Will clearly reflects that the testator intended that Miami University, Oxford, Ohio be a member of the class of beneficiaries of the Walter E. Havighurst Fund. Subparagraph 9 of Paragraph G(b) of the Havighurst Will provides that the projects to be supported by the Havighurst Fund may include the establishment of an endowed professorship at Miami University. Miami University students were also named by the testator as members of the class of intended beneficiaries of the Havighurst Fund. Within his guidelines for educational projects, the testator listed, inter alia, classes, study groups, and presentations for Miami University students and even included group trips to the Soviet Union for Miami University students.

The Court finds that the continued existence of the political entity formerly known as the "Union of Soviet Socialist Republics" was not intended by the testator to be an integral factor in the testator's overall plan concerning the creation and administration of the Walter E. Havighurst Fund. The testator's primary purpose in establishing this charitable trust was to fund and promote education and more particularly to fund and promote educational projects that would help build cross-cultural understanding between the "peoples" of the United States of America and what was known in 1988 as the Union of Soviet Socialist Republics. The Court further finds that the testator intended the terms "Union of Soviet Socialist Republics," "Soviet Union," and "Soviet" to primarily be descriptive of the "peoples" that inhabited that area of the world. The fact that the "Union of Soviet Socialist Republics" no longer exists as a political entity is of no importance in carrying out the terms of this charitable trust in accordance with the intent of the testator. The "peoples" still exist. The need for education still exists. The need for cross-cultural understanding between the "peoples" of the United States and the "peoples" still living in the same geographical area that was formerly known as the "Soviet Union" still exists. Miami University still exists. Miami University students still exist. The other classes of persons that the testator intended to be benefited by the Havighurst Fund still exist. The

testator never intended that his residuary estate pass by the laws of intestate succession in the event that the political entity known as the "Soviet Union" dissolved.

Defendants/Counterclaimants Alan W. Havighurst and Douglas A. Havighurst have also asserted that because no formal "Miami University International Center" currently exists, the trust described in Paragraph G of the Havighurst Will cannot be carried out in accordance with its terms, the proposed gift of trust must fail and lapse and the residuary estate of testator must be declared intestate property. The court finds this contention to be without merit.

On September 7, 1988 and on October 11, 1989 when Walter E. Havighurst executed his Last Will and Testament and codicil, respectively, the administration of Miami University was in the process of developing an Office of International Programs at Miami University, Oxford, Ohio. Prior to establishing an Office of International Programs, Miami University had a Director of International Student Services. During 1989, Miami University hired a Director for its Office of International Programs. During this time period the physical center of international activities at Miami University was located at Langstroth Cottage on the Miami University campus in Oxford, Ohio. Throughout the late 1980's the overall academic plan of Miami University included the continued development of the University's International program and included the

development of the Office of International Programs and an International Center at Miami University. Within the University community the Office of International Programs is sometimes referred to as the "International Center."

In the case sub judice the testator provided that "the income of my trust estate, and the principal if need be, shall be used by my Trustee to promote and fund educational projects through the Miami University International Center, Oxford, Ohio…" The reference to the "Miami University International Center" is administrative in nature. The terms of the Will create no substantive duties and delegate no powers to the "Miami University International Center." The testator named the First National Bank of Southwestern Ohio as the Trustee of the Walter E. Havighurst Fund and delegated specific powers. The Trustee will be held legally accountable as a fiduciary under the law of Ohio. Under Sub-paragraph (b) of Item III, Paragraph G, the testator gave the President of Miami University, Oxford, Ohio, or his or her designee, sole discretion to determine the nature of the educational projects, within the guidelines set forth in the Havighurst Will. Under Sub-paragraph (e) of Item III, Paragraph G, the testator requested that Ruth Neff and Samuel Neff be utilized as consultants to the President of Miami University for purposes of providing suggestions and advice.

Even if the form of the charitable

trust created by the Havighurst Will was an outright bequest to the "Miami University International Center", which it is not, the charitable trust would not fail simply because no formal "Center" existed at the time of the testator's death. A charitable organization may come into existence after a will has been probated and receive a charitable bequest under the will if such will permits the decedent's intent to be realized and carried out. Where a will includes a bequest to a charitable organization not yet in existence at the time of the execution of the will or of its probating, there is nevertheless an immediate gift for charitable purposes upon the testator's death, and if the organization is formed within a reasonable time thereafter, it is entitled to receive the bequest. American Diabetes Ass'n. Inc. v. Diabetes Soc. Of Clinton Cty. (1986), 31 Ohio App. 3d 136, 509 N.E.2d 84 (1986). See also Rice v. Stanley (1975) 42 Ohio St. 209, 327 N.E.2d 774.

To accomplish the purpose of a charitable trust and to effectuate its administration, a court of equitable jurisdiction will direct or permit a trustee to deviate from a term of the trust, if it appears to the court that compliance with the letter of the instrument of creation is impossible. First National Bank of Akron, Trustee, v. Unknown Heirs of Donnelly, Jr. et al., 96 Ohio App. 509, 122 N.E.2d 672 (1954).Where the creator of a testamentary charitable trust has made no

provision for forfeiture, or has not made an alternate bequest in the event that a strict compliance with the letter of his will is impossible, an inference may be drawn that the testator did not intend that the gift to charity should fail, but on the contrary intended that if the carrying out of his dominant purpose was possible by varying the means and methods prescribed, a deviation should be allowed, to meet circumstances arising from time to time during the existence of the trust. First National Bank of Akron, supra. See also In re Farren, 27 Ohio App. 2d 31, 272 N.E. 2d 162 (1970).

After reviewing the terms of the Havighurst Will in its entirety and taking into account the extrinsic evidence admitted at trial concerning the existence of the Office of International Programs that existed at Miami University at the time the testator executed his Will, this Court finds that the testator intended the reference to the "Miami University International Center" in Sub-paragraph (b) of Item III, Paragraph G, to mean the "Miami University International Center" or the "Office of International Programs at Miami University" and the Havighurst Will may be construed in that manner. If such a construction were not proper, this Court would not hesitate to apply the doctrine of deviation to arrive at the same result.

With respect to the issues of construction raised by the demise of the political entity formerly known as the

"Soviet Union," the Court is aware that in addition to the doctrine of deviation, another doctrine exists, i.e., the doctrine of *cy pres*, which, if applicable, would keep this charitable trust from failing. The doctrine of *cy pres* operates in the field of charitable trusts and is a rule of judicial construction. In a charitable trust, where the court finds that the settlor manifested a general intention to give to charity, and it is impracticable or inexpedient to carry out the terms of the trust, the court will execute the purpose of the settlor as nearly as it can, according to the original plan, under the doctrine of *cy pres*. See Craft v. Shroyer, 81 Ohio App. 253, 74 N.E.2d 589 (1947). As stated in the Restatement of the Law of Trusts:

> "If property is given in trust to be applied to a particular charitable purpose, and it is or becomes impossible or impracticable or illegal to carry out the particular purpose, and if the settlor manifested a more general intention to devote the property to charitable purposes, the trust will not fail but the court will direct the application of the property to some charitable purpose which falls within the general charitable intention of the settlor." Restatement of the Law of Trusts, Section 399.

See also First National Bank of Akron,

Trustee, v. Unknown Heirs of Donnelly, Jr., et al., 96 Ohio App. 509, 122 N.E. 2d 672 (1954).

If the primary purpose of a charitable trust can be accomplished by deviation from express terms in the instrument of creation, in respect to purely administrative matters, it becomes unnecessary to analyze the facts in the light of the doctrine of *cy pres*, and, in doing the latter, determine whether the donor manifested a general charitable intent, and if so, whether the property should be used for an approximate charitable purpose (a purpose as nearly as may be like the purpose stated by the donor) when it is impossible to exactly carry out his specific intent. See: 3 Scott on Trusts, Section 399; 2A Bogert on Trusts and Trustees, Section 441; Heinlein v. Elyria Savings & Trusts Co., Exr. & Trustee, 75 Ohio App.353, 62 N.E.2d 284; First National Bank of Akron, Trustee, supra.

In the case sub judice the court finds that the testator manifested a general charitable intention to devote his residuary estate to charitable purposes.Since the Court has previously found that the continued existence of the political entity formerly known as the Union of Soviet Socialist Republics was not intended by the testator to be an integral factor in the testator's overall plan concerning the creation and administration of the Walter E. Havighurst Fund, the court does not finds that it is impossible or impracticable or illegal to carry out the

particular purpose of the charitable trust created by the Havighurst Will.

The Court further finds that since the testator intended the terms "Union of Soviet Socialist Republics", "Soviet Union," and "Soviet", as used in his Last Will and Testament, to primarily be descriptive of the "peoples" that inhabited that geographical area of the world, and the Havighurst Will may be construed in that manner. Within the intent of the testator, the term "Union of Soviet Socialist Republics" may be construed in that manner. Within the intent of the testator, the term "Union of Soviet Socialist Republics" may be construed to also mean "former Union of Soviet Socialist Republics," and the term "Soviet Union" may also be construed to mean "former Soviet Union." Therefore this Court does not find it necessary to apply the doctrine of *cy pres*. If such construction of those terms were not proper, this Court would not hesitate to apply either the doctrine of deviation of the doctrine of *cy pres* to uphold the charitable trust created by the testator.

In its complaint, Plaintiff sought a declaration that the terms of the charitable trust, as set out in the Will, creates no reversionary interest in the heirs of the testator. No such reversionary interest is expressed in the terms of the Havighurst Will. The testator's heirs could only have a reversionary interest in the trust estate if the charitable trust failed and the doctrines of deviation or *cy pres* could not save the trust. A testator is never

presumed to have died intestate as to any part of his estate to which his attention was seemingly directed. Carr v. Stradley (1977), 52 Ohio St. 2d 220, 371 N.E.2d 540. In the case sub judice the Court has already stated that it if it becomes impossible or impracticable or illegal to carry out the particular purpose of this charitable trust, the Court would not hesitate to apply either the doctrine of deviation or *cy pres* to carry out the general charitable intent of the testator. Under these circumstances the heirs of the testator have no reversionary interest in the trust estate.

Before concluding this Opinion the Court would like to point out to the parties that the residuary clause of the Havighurst Will creates a charitable trust to be administered according to the terms set forth and subject to the general jurisdiction of the Probate Court. The named Trustee is the First National Bank of Southwestern Ohio. Miami University is not the Trustee. The Miami University International Center or the Office of International Programs at Miami University is not the Trustee. The President of Miami University is not the Trustee. The testator gave the President of Miami University the sole discretion, within the enumerated guidelines, to select the educational projects that would be funded and promoted by the Havighurst Fund. However, implicit in the method of administration chosen by the testator is the general oversight of

the Trustee. As a fiduciary, the Trustee should conduct itself accordingly.

In accordance with the Opinion of this Court, it is therefore

ORDERED, ADJUDGED AND DECREED that the trust created by the provisions of Item III, Paragraph G of the Last Will and Testament of Walter E. Havighurst shall be construed to also mean "former Union of Soviet Socialist Republics", and the term "Soviet Union" as used in the Last Will and Testament of Walter E. Havighurst shall also be construed to mean "former Soviet Union," and it is

FURTHER ORDERED, ADJUDGED AND DECREED that the term "Miami University International Center" as used in Sub-paragraph (b) of Item III, Paragraph G of the Last Will and Testament of Walter E. Havighurst shall be construed to mean the "Miami University International Center" or the "Office of International Programs at Miami University," and it is

FURTHER ORDERED, ADJUDGED AND DECREED that the charitable trust created by the provisions of Item III, Paragraph G of the Last Will and Testament of Walter E. Havighurst be fully funded and carried out in accordance with its terms and the Executor of the Estate of Walter E. Havighurst is hereby authorized and directed to distribute the residuary of the Havighurst estate to THE FIRST NATIONAL BANK OF SOUTHWESTERN OHIO, Monroe, Ohio, IN TRUST NEVERTHELESS, for the uses and purposes set forth in Item III, Paragraph G of the Last Will and Testament of Walter E. Havighurst, and it is

FURTHER ORDERED, ADJUDGED AND DECREED that the terms of the charitable trust, as set out in the Last Will and Testament of Walter E.Havighurst, create no reversionary interest in the heirs of Walter E. Havighurst, and it is

FURTHER ORDERED, ADJUDGED and DECREED that the Amended Counterclaim filed by the Defendant, Alan W. Havighurst, is dismissed, and it is

FURTHER ORDERED, ADJUDGED and decreed that the Amended Counterclaim filed by the Defendant, Douglas A. Havighurst, is dismissed, and it is

FURTHER ORDERED, ADJUDGED AND DECREED that the Plaintiff, as the Executor of the Estate of Walter E. Havighurst shall pay the costs of this action.

Dated:
December 15, 1995 /s/ Randy T. Rogers,
Judge

IN THE COURT OF COMMON PLEAS
PROBATE DIVISION
BUTLER COUNTY, OHIO

THE FIRST NATIONAL BANK OF SOUTHWESTERN OHIO, EXECUTOR OF THE ESTATE OF WALTER E. HAVIGHURST	*	CASE NO. 94-0175
	*	Judge Randy T. Rogers
PLAINTIFF		
VS.	*	
MIAMI UNIVERSITY, ET AL.	*	FINDINGS OF FACT AND CONCLUSIONS OF LAW
DEFENDANTS	*	

* * * * * * * * * * *

FINDINGS OF FACT

1. Walter E. Havighurst died on February 3, 1994 at the age of ninety-three (93).

2. On September 7, 1988, Walter E. Havighurst executed his Last Will and Testament.

3. A Codicil to the Last Will and Testament of Walter E. Havighurst dated September 7, 1988 was executed by Walter E. Havighurst on October 11, 1989.

4. Item III of the Havighurst Will provided, *inter alia:*

> "ITEM III. A. I give and devise all of the real property I may own, or have an interest in at the time of my death, to MIAMI UNIVERSITY, Oxford, Ohio. This bequest is unrestricted and the Board of Trustees may use and expend the same for the benefit of the

University in any manner it deems appropriate.

B. To the individuals and institutions listed below, I give and bequeath the following:

1. To MIAMI UNIVERSITY, Oxford, Ohio any and all books owned by me at my death;

2. To MIAMI UNVIERSITY, Oxford, Ohio all of my papers, letters, manuscripts, and other items of literary interest. It is my desire that such items be placed in THE KING LIBRARY of MIAMI UNIVERSITY.

3. To SAMUEL NEFF, now residing in Richmond, Indiana, if he survives me, any automobile, typewriters, and luggage, owned by me at my death.

4. To MIAMI UNVIERSITY, Oxford, Ohio, my Hodgin painting of Fisher Hall, presently hanging in my study, if owned by me at my death. It is my desire that said painting be placed in the Joseph M. Bachelor Room of Bachelor Hall, Miami University, Oxford, Ohio.

5. To my niece, RUTH NEFF,now residing in Richmond, Indiana, if she survives me, all furniture, appliances, rugs, draperies, silver, china, crystal, art objects, decorative pieces, and all other furnishings and items for household use, located in my residence at the time of my death.

6. To GOODWILL INDUSTRIES,all men's clothing which I own at the time of my death.

C. I give and bequeath to each of the following individuals as follows:

1. $100,000 to my sister, Mrs. MIRIAM HAVIGHUST JOHNSON, if she survives me;

2. $25,000 to BRUCE J. HAVIGHURST, now residing at 20861 Byron Road, Shaker Heights, Ohio 44122, if he survives me;

3. $25,000 to DOUGLAS A. HAVIGHURST, now residing at 1151 Haselton Road, Shaker Heights, Ohio 44121, if he survives me.

4. $25,000 to ALLAN W. HAVIGHURST, now residing at 3071 Huntington Road, Shaker Heights, Ohio 44120, if he survives me;[1]

5. $25,000 to WALTER E. HAVIGHURST, now residing at 338 West 47 Street, New York, New York, 10024, if he survives me;

6. $25,000 to JAMES P. HAVIGHURST, now residing at 52 Rapaki Road, Christchurch, New Zealand, if he survives me.

7. $25,000 to RUTH NEFF, now residing at 329 SW First Street, Richmond, Indiana 47374, if she survives me;

D. I give and bequeath to my niece, HELEN BERK, now residing at 2301 Cheryl Drive, Jacksonville, Florida 32017, if she survives me, the sum of

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[1] The name and address of Alan W. Havighurst were corrected in the October 11, 1989 Codicil to the Havighurst Will.

$5,000.000.

E. If DOUGLAS A. WILSON and SUSAN WILSON, or either of them or their estates, or their beneficiaries thereof, should be indebted to me at my death, as evidenced by a note and a second mortgage executed by them and delivered to me, in the face amount of $50,000, or any renewals thereof, I direct and require that all of such indebtedness and all interest thereon be forgiven and cancelled in its entirely, it being my intention by the bequest to relieve said DOUGLAS O. WILSON and SUSAN WILSON, or either of them, or their estates, or their beneficiaries thereof of any obligation to repay said indebtedness, or any part thereof, or any interest thereon.

F. I give and bequeath the sum of $250,000 to MIAMI UNIVERSITY, Oxford, Ohio to be used by Miami University as an endowment for the Special Collections Library, for enhancing its holdings.

G. All the rest, residue and remainder of my estate, of whatever nature and wherever situated, which I own at the time of my death, I give, devise and bequeath to THE FIRST NATIONAL BANK OF SOUTHWESTERN OHIO, Monroe, Ohio, IN TRUST NEVERTHELESS, for the following uses and purposes and under the following terms and conditions:

(a) I do hereby confer on my Trustee all of the powers which are now or may hereafter be conferred by law upon

trustees, and in addition thereto, my said Trustee shall have full power and authority to perform the following.....[2]

(b) The income of my trust estate, and the principal if need be, shall be used by my Trustee to promote and fund educational projects through the Miami University International Center, Oxford, Ohio, for building cross-cultural understanding between the peoples of the United States of America and the Union of Soviet Socialist Republics. The President of Miami University, Oxford, Ohio, or his or her designee, shall have the sole discretion to determine the nature of said projects, within the guidelines set forth below, and to determine the amounts necessary to fund said projects.

1. Funding and promoting presentations to members of the general public on the Soviet Union;

2. Funding and promoting classes and presentations to Miami University students and children on various aspects of Soviet life;

3. Funding promoting study groups and classes for Miami University students and adults on Soviet-

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[2]Subparagraphs G(a)(1)-(a)(12) containing the administrative powers of the Trustee have not been reproduced as part of these Findings of Fact and Conclusions of Law. They may be found in their entirety in Plaintiff Exhibit 1.

American relations and contemporary Soviet society;

4. Funding and promoting presentations, seminars, and studies on relations between the governments of the United States and the Soviet Union;

5. Funding and promoting programs and classes dealing with conflict relationships at the international level;

6. Funding and promoting Miami University student, and group trips by members of the Oxford, Ohio community to the Soviet Union through a "sister city" program, according to guidelines set forth by Sister Cities International, Washington, D.C.;

7. Funding and promoting group trips to the Soviet Union to allow Miami University students, Oxford, Ohio citizens, and other Americans to meet and establish direct contact with municipal officials, industrial workers, educators, students, medical, legal, and other professionals, agriculturalists, and creative artists;

8. To promote and fund exchanges of children's artwork between Soviet and American children and to promote and to fund consultative services to municipalities and groups wishing to establish direct contact with Soviet people and their counterparts;

9. To establish and fund an endowed professorship of Soviet-American Relations at Miami University, Oxford, Ohio.

(c). This trust fund shall be referred to as the WALTER E. HAVIGHURST FUND.

(d). It is contemplated that the trust income and principal, if needed, shall be used, at least initially, to fund and promote the projects listed in (b) above, primarily in Southwestern Ohio and Southeastern Indiana. However, my trustee shall have the authority to fund such projects anywhere in the United States, if they are in keeping with the overall purposes of this trust and if pursuant to instructions given to it by the President of Miami University, Oxford, Ohio.

(e). I request that RUTH NEFF and SAMUEL NEFF, now residing in Richmond, Indiana, by [sic] utilized as consultants to the President of Miami University, Oxford, Ohio, for the purposes of providing suggestions and advice on ways that the above projects might be accomplished although the ultimate decisions shall remain with said President.

(f). As set forth above, a [sic] determinations regarding expenditures of funds shall be made by the President of Miami University, Oxford, Ohio, or his or her designee. My Trustee shall be relieved of any and all liability from or responsibility for the decisions made by said President."

5. The only substantive change to the Havighurst Will by the October 11, 1983 Codicil was the addition of the following provision under Item III, paragraph C:

"8. "$25,000 to DORTHY H.

KUCERA, now residing at 9310 Hamlin Avenue, Evanston, Illinois 60203, if she survives me."

6. Walter E. Havighurst served over a period of many years as a distinguished member of the faculty of Miami University, Oxford, Ohio.

7. Walter E. Havighurst was a charitable person.

8. During the years 1988 and 1989 Walter E. Havighurst made substantial charitable contributions. His 1988 Federal income tax return (Form 1040) reflected charitable contributions of $25,000 during 1988 and his 1989 Federal income tax return (Form 1040) reflected charitable contributions of $68,836 during 1989.

9. Throughout his adult life, Walter E. Havighurst had an affinity for Miami University, Oxford, Ohio.

10. In his Last Will and Testament dated September 7, 1988, Walter E. Havighurst named Miami University, Oxford, Ohio as the devisee of all real property which he owned, or had an interest in at the time of his death. Pursuant to this provision, Miami University received the Havighurst residence located at 163 Shadowy Hills Drive, Oxford, Ohio which was valued at $194,000 at the time of Dr. Havighurst's death.

11. In addition to the devise of real estate and bequests of certain tangible personal property, Walter E. Havighurst also bequeathed the sum of $250,000 to Miami University.

12. When Walter E. Havighurst died, was a widower, and left no issue then surviving.

13. Walter E. Havighurst made special bequests in his Last Will and Testament totaling more than $250,000 to his nieces, nephews and other named individuals.

14. On September 7, 1988 and on October 11, 1989 when Walter E. Havighurst executed his Last Will and Testament and Codicil, respectively, the administration of Miami University was in the process of developing an Office of International Programs at Miami University, Oxford, Ohio.

15. Prior to establishing an Office of International Programs, Miami University had a Director of International Student Services.

16. During 1989, Miami University hired a Director for its Office of International Programs.

17. On September 7, 1988 and on October 11,1989, the physical center of international activities at Miami University was located at Langstroth Cottage located on the Miami University campus in Oxford, Ohio.

18. Throughout the late 1980's the overall academic plan of Miami University included the continued development of the University's international programs and included the development of the Office of International Programs and an International Center at Miami University. Within the University community the Office of International Programs was sometimes informally referred to as the "International Center."

19. On September 7, 1988 and on October 11, 1989 when Walter E. Havighurst executed his Last Will and Testament and Codicil, respectively, the administration of Miami

University, Oxford, Ohio had an established plan which included the development of an Office of International Programs and International Center at Miami University.

20. Throughout 1988 and 1989 there existed a nation known as the "Union of Soviet Socialist Republics" ("U.S.S.R."), and also referred to as the "Soviet Union."

21. In 1987, approximately 284,000,000 people lived in the fifteen Soviet Socialist Republics which then comprised the Soviet Union.

22. On September 7, 1988 and on October 11, 1989 when Walter E. Havighurst executed his Last Will and Testament and Codicil, respectively, the fifteen Soviet Socialist Republics which made up the Union of Soviet Socialist Republics included the Russian Soviet Federated Socialist Republic, the Ukrainian S.S.R.,[3] the Byelorussian S.S.R., the Uzbek S.S.R., the Kazbah S.S.R., the Georgian S.S.R., the Azerbajan S.S.R., the Lithuanian S.S.R., the Modavian S.S.R., the Latvian S.S.R., the Kirghiz S.S.R., the Tajik S.S.R., the Armenian S.S.R., the Turkem S.S.R., and the Estonian S.S.R.

23. On September 23, 1988 and on October 11, 1989 when Walter E. Havighurst executed his Last Will and Testament and Codicil, respectively, twenty two different "peoples" or ethnic groups with at least one million members or more lived in the Union of Soviet Socialist Republics.

24. In 1991, the "Union of Soviet Socialist Republics" ceased to exist as a

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[3] "S.S.R." is an abbreviation for "Soviet Socialist Republic."

political entity. Today, there are still twenty-two different "peoples" or ethnic groups with at least one million members or more living in the same geographical are that was formerly known as the "Union of Soviet Socialist Republics". The former Russian Soviet Federated Socialist Republics is now known as the Russian Federation or Russia. The Ukrainian S.S.R. is now known as Ukraine. The former Byelorussian.S.R. is now known as Belarus. The former Uzbek S.S.R. is now known as Uzbekstan. The former Kazbah S.S.R. is now known as Kazakhstan. The former Georgian S.S.R. is now known as Georgia. The former Azerbajan S.S.R. is now known as Azerbaijan. The former Lithuanian S.S.R. is now known as Lithuania. The former Moldavian S.S.R. is now known as Moldava. The former Latvian S.S.R. is now known as Latvia. The former Kirghiz S.S.R. is now known as Kyrgyzstan. The former Tajik S.S.R. is now known as Tajikistan. The former Armenian S.S.R. is now known as Armenia. The former Turkem S.S.R. is now known as Turkmenistan. The former Estonian S.S.R. is now known as Estonia.

25. Eleven of the former Soviet Socialist Republics have joined with the Russian Federation to form a political entity known as the Commonwealth of Independent States. Estonia, Latvia and Lithuania have not joined this Commonwealth. Different terms are now used to refer to the geographic area that was once known as the "Soviet Union." Some people refer to this area as "the former Soviet Union." Others refer to this area

as the "post Soviet states." Still others refer to this area of the world as the "Newly Independent States."

26. The continued existence of the political entity formerly known as the "Union of Soviet Socialist Republics was not intended by the testator to be an integral factor in the testator's overall plan concerning the creation and administration of the Walter E. Havighurst Fund.

27. The primary purpose of Walter E. Havighurst in establishing the charitable trust was to fund and promote education and more particularly to fund and promote educational projects that would help build cross-cultural understanding between the "peoples" of the United States of America and what was known in 1988 as the Union of Soviet Socialist Republics.

28. Walter E. Havighurst intended the terms "Union of Soviet Socialist Republics," "Soviet Union", and "Soviet", as those terms were used in his Last Will and Testament, to primarily be descriptive of the "peoples" that inhabited that area of the world.

29. The fact that the "Union of Soviet Socialist Republics" no longer exists as a political entity is of no importance in carrying out the terms of the trust in accordance with the intent of the [sic] Walter E. Havighurst

30. Walter E. Havighurst intended the reference to the "Miami University International Center" in Sub-paragraph (b) of Item III, Paragraph G, of his Will, to mean the "Miami University International

Center" or the "Office of International Programs at Miami University."

CONCLUSIONS OF LAW

1. A probate court may construe the provisions of a will in a declaratory judgment action. R.C. 2127.03. See also In re Trust of Selsor, 13 Ohio App. 3d 164, 468 N.E. 745 (1983).

2. In the construction of a will, the sole purpose of the court should be to ascertain and carry out the intention of the testator. Such intention must be ascertained from the words contained in the will. Townsend's Executors v. Townsend, et al. (1874), 25 Ohio St. 477; Carr v. Stradley (1977), 52 Ohio St. 2d 220, 371 N.E. 2d 540; American Diabetes Ass'n', Inc. v. Diabetes Soc. Of Clinton Cty., 31 Ohio App. 3d 136, 509 N.E. 2d 84 (1986).

3. When a term in a will is susceptible to various meanings, the Probate Court may consider the circumstances surrounding the drafting of the instrument in order to arrive at a construction consistent with the overall intent of the testator so as to uphold all parts of the will. Willis v. Union Savings & Trust Co. (1982) 69 Ohio St. 2d 382, 433 N.E. 2d 415, American Diabetes, supra. Whether the will appears ambiguous or not, the Court is entitled to hear such extrinsic evidence of the surrounding circumstances as will put it in the place of the testator. Until this is done, the Court cannot know whether the will is ambiguous or not. While evidence of

surrounding circumstances is admissible to enable the Court to understand the meaning of the words which testator has used in the will, it is not admissible to add to the will provision which cannot fairly be inferred from the language which is used therein, or to take from the will provisions which are clearly expressed therein. See Page, The Law of Wills, Sec. 32.2, page 237.

5. In any case where it is necessary to invoke extrinsic evidence to assist in the construction of a will, it is recognized by the great weight of authority that evidence of the facts and circumstances existing at the time of the execution of the will, and known to the testator, is admissible not to contradict the meaning of the will, but to "enable the court to place itself in the testator's situation, to see things as the saw them, and to apply his language as he understood and intended it." See Page, The Law of Wills, Section 32.8, page 260.

Gifts in trust for the purposes of education are within the rules governing charitable trusts and are liberally construed. Carrel v. State ex rel. Brown, 11 Ohio App. 281, 30 CC(NS) 161 (1919).

7. Gifts for charitable purposes have always been favored in equity, and trusts created for such purposes are carried into effect upon broad liberal principles of equity jurisprudence under circumstances where a purely private trust might fail. Gearhart v. Richardson, (1924), 109 Ohio St. 418, 142 N.E. 890.

8. The trust created by the provisions of Item III, Paragraph G of the

Last Will and Testament of Walter E. Havighurst is a charitable trust under the law of the State of Ohio.

9. The language of the Havighurst Will clearly reflects that the testator intended that Miami University, Oxford, Ohio be a member of the class of beneficiaries of the Walter E. Havighurst Fund.

10. The continued existence of the political entity formerly known as the "Union of Soviet Socialist Republics" was not intended by the testator to be an integral factor in the testator's overall plan concerning the creation and administration of the Walter E. Havighurst Fund.

11. The testator's primary purpose in establishing this charitable trust was to fund and promote education and more particularly to fund and promote educational projects that would help build cross-cultural understanding between the "peoples" of the United States of America and what was known in 1988 as the Union of Soviet Socialist Republics.

12. The testator intended the terms "Union of Soviet Socialist Republics, "Soviet Union", and "Soviet" to primarily be descriptive of the "peoples" that inhabited that area of the world.

13. The fact that the "Union of Soviet Socialist Republics" no longer exists as a political entity is of no importance in carrying out the terms of this charitable trust in accordance with the intent of the testator.

14. A charitable organization may

come into existence after a will has been probated and receive a charitable bequest under the will if such will permits the decedent's intent to be realized and carried out. Where a will includes a bequest to a charitable organization not yet in existence at the time of the execution of the will or of its probating, there is nevertheless an immediate gift for charitable purposes upon the testator's death, and if the organization is formed within a reasonable time thereafter, it is entitled to receive the bequest. American Diabetes Ass'n. Inc. v. Diabetes Soc. Of Clinton Cty. (1986), 31 Ohio App. 3d 136, 509 N.E.2d 84 (1986). See also Rice v. Stanley (1975) 42 Ohio St. 209, 327 N.E.2d 774.

15. To accomplish the purpose of a charitable trust and to effectuate its administration, a court of equitable jurisdiction will direct or permit a trustee to deviate from a term of the trust, if it appears to the court that compliance with the letter of the instrument of creation is impossible. First National Bank of Akron, Trustee, v. Unknown Heirs of Donnelly, Jr. et al., 96 Ohio App. 509, 122 N.E.2d 672 (1954).

16. Where the creator of a testamentary charitable trust has made no provision for forfeiture, or has not made an alternate bequest in the event that a strict compliance with the letter of his will is impossible, an inference may be drawn that the testator did not intend that the gift to charity should fail, but on the contrary intended that if the carrying out

of his dominant purpose was possible by varying the means and methods prescribed, a deviation should be allowed, to meet circumstances arising from time to time during the existence of the trust. First National Bank of Akron, supra. See also In re Farren, 27 Ohio App. 2d 31, 272 N.E. 2d 162 (1970).

17. Walter E. Havighurst intended the reference to the "Miami University International Center" in Sub-paragraph (b) of Item III, Paragraph G, of his Will, to mean the "Miami University International Center" or the "Office of International Programs at Miami University" and the Havighurst Will may be construed in that manner.

18. The doctrine of cy pres operates in the field of charitable trusts and is a rule of judicial construction. In a charitable trust, where the court finds that the settlor manifested a general intention to give to charity, and it is impracticable or inexpedient to carry out the terms of the trust, the court will execute the purpose of the settlor as nearly as it can, according to the original plan, under the doctrine of cy pres. See Craft v. Shroyer, 81 Ohio App. 253, 74 N.E.2d 589 (1947).

19. If property is given in trust to be applied to a particular charitable purpose, and it is or becomes impossible or impracticable or illegal to carry out the particular purpose, and if the settlor manifested a more general intention to devote the property to charitable purposes, the trust will not fail but the court will

direct the application of the property to some charitable purpose which falls within the general charitable intention of the settlor." Restatement of the Law of Trusts, Section 399. See also First National Bank of Akron, Trustee, v. Unknown Heirs of Donnelly, Jr., et al, 96 Ohio App. 509, 122 N.E. 2d 672 (1954).

20. If the primary purpose of a charitable trust can be accomplished by deviation from express terms in the instrument of creation, in respect to purely administrative matters, it becomes unnecessary to analyze the facts in the light of the doctrine of cy pres, and, in doing the latter, determine whether the donor manifested a general charitable intent, and if so, whether the property should be used for an approximate charitable purpose (a purpose as nearly as may be like the purpose stated by the donor) when it is impossible to exactly carry out his specific intent. See: 3 Scott on Trusts, Section 399; 2A Bogert on Trusts and Trustees, Section 441; Heinlein v. Elyria Savings & Trusts Co., Exr.& Trustee, 75 Ohio App.353, 62 N.E.2d 284; First National Bank of Akron, Trustee, supra.

21. The language of the Havighurst Will manifested a general charitable intention on the part of the testator to devote his residuary estate to charitable purposes.

22. Walter E. Havighurst intended the terms "Union of Soviet Socialist Republics", "Soviet Union," and "Soviet", as used in his Last Will and Testament, to

primarily be descriptive of the "peoples" that inhabited that geographical area of the world, and the Havighurst Will may be construed in that manner. Within the intent of the testator, the term "Union of Soviet Socialist Republics" may be construed in that manner. Within the intent of the testator, the term "Union of Soviet Socialist Republics" may be construed to also mean "former Union of Soviet Socialist Republics," and the term "Soviet Union" may also be construed to mean "former Soviet Union."

23. It is not impossible or impracticable or illegal to carry out the particular purpose of the charitable trust created by the Havighurst Will.

24. The heirs of the Walter E. Havighurst have no reversionary interest in the trust estate.

Dated: February 21, 1996

/s/ Randy T.Rogers,
Judge

IN THE COURT OF COMMON PLEAS
PROBATE DIVISION
BUTLER COUNTY, OHIO

THE FIRST NATIONAL BANK OF SOUTHWESTERN OHIO, EXECUTOR OF THE ESTATE OF WALTER E. HAVIGHURST	*	*Case No. 94-0175 Judge Randy Rogers
Plaintiff	*	
vs.	*	AMENDED JUDGMENT ENTRY OF DECLARATORY JUDGEMENT FINAL APPEALABLE ORDER
MIAMI UNIVERSITY, ET AL.	*	
Defendants		

* * * * * * *

On December 15, 1995 this Court filed an Opinion and Judgment Entry of Declaratory Judgment. On December 26, 1995, Defendants, Alan W. Havighurst and Douglas A. Havighurst, each filed a Request for Findings of Fact and Conclusions of Law pursuant to Civ. R. 52.

As stated by the Twelfth District Court of Appeals in Abney v. W. Res. Mut. Cas. Co., 76 Ohio App. 3d 421 (1991), Civ. R. 52 provides:

> "When questions of fact are tried by the court without a jury, judgment may be general for the prevailing party unless one of the parties in writing requests otherwise before the entry of judgment pursuant to Civ. R. 58, or not later than seven days

> after the party filing the request has been given notice of the court's announcement of its decision, whichever is later, in which case, the court shall state in writing the conclusions of fact found separately from the conclusions of law.
>
> * * *
>
> An opinion or memorandum of decision filed in the action prior to judgment entry and containing findings of fact and conclusions of law stated separately shall be sufficient to satisfy the requirements of this rule and rule 41(B)."

The trial court in Abney, supra, overruled appellants' motion for findings of fact and conclusions of law, stating that its written decision "was a complete statement of the court's findings and conclusions and fully complies with the final paragraph of Civ. R. 52." The Court of Appeals upheld the trial court in Abney.

The purpose of separately stated findings of fact and conclusions of law is to enable a reviewing court to determine the existence of assigned error. Davis v. Wilkerson, 29 Ohio App. 3d 100 (1986). If the court's ruling or opinion, together with other parts of the trial court's record, provides an adequate basis upon which an appellate court can decide the legal issues presented, there is such substantial compliance with Civ. R. 52. Stone v. Davis (1981) 66 Ohio St. 2d 74.

Although this Court believes that the fifteen (15) page opinion previously filed in the case sub judice sufficiently sets forth the basis of this court's ruling, the court has on this date filed herein its separately stated Findings of Fact and Conclusions of Law in response to the requests of the Defendants, Alan W. Havighurst and Douglas Havighurst.

The Court also notes that the original Opinion did contain a typographical error in that this matter did come before the Court for trial on September 5 and September 6, 1995 and not September 4, 1995, as incorrectly typed in the original Opinion. Pursuant to Civ. R. 60(A) the Court does hereby correct the Opinion and Judgment entry filed herein on December 16, 1995. In all other respects the court's Opinion and Judgment remain the same and are incorporated herein by reference.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the trust created by the provisions of Item III, Paragraph G of the Last Will and Testament of Walter E.Havighurst is hereby declared to be a charitable trust under the law of the State of Ohio, and it is

FURTHER ORDERED, ADJUDGED AND DECREED that the term "Union of Soviet Socialist Republic" as used in the Last Will and Testament of Walter E. Havighurst shall be construed to also mean "former Union of Soviet Socialist Republics", and the term "Soviet Union" as used in the Last Will and Testament of Walter E. Havighurst shall also be construed to mean "former Soviet

Union," and it is

FURTHER ORDERED, ADJUDGED AND DECREED THAT THE TERM "Miami University International Center" as used in Sub-paragraph (b) of Item III, Paragraph G of the Last Will and Testament of Walter E. Havighurst shall be construed to mean the "Miami University International Center" or the "Office of International Programs at Miami University," and it is

FURTHER ORDERED, ADJUDGED AND DECREED That the charitable trust created by the provisions of Item III, Paragraph G of the Last Will and Testament of Walter E. Havighurst be fully funded and carried out in accordance with its terms and the Executor of the Estate of Walter E. Havighurst is hereby authorized and directed to distribute the residuary of the Havighurst estate to THE FIRST NATIONAL BANK OF SOUTHWESTERN OHIO, Monroe, Ohio, IN TRUST NEVERTHELESS, for the uses and purposes set forth in Item III, Paragraph G of the Last Will and Testament of Walter E. Havighurst, and it is

FURTHER ORDERED, ADJUDGED AND DECREED that the terms of the charitable trust, as set out in the Last Will and Testament of Walter E. Havighurst, create no reversionary interest in the heirs of Walter E. Havighurst, and it is

FURTHER ORDERED, ADJUDGED and DECREED that the Amended Counterclaim filed by the Defendant, Alan W. Havighurst, is dismissed, and it is

FURTHER ORDERED, ADJUDGED and decreed that the Amended Counterclaim filed by the

Defendant, Douglas A. Havighurst, is dismised, and it is

FURTHER ORDERED, ADJUDGED AND DECREED that the Plaintiff, as the Executor of the Estate of Walter E. Havighurst shall pay the costs of this action.

Dated: December 15, 1965 /s/
Randy T. Rogers,
Judge